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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC FOR MAIL SECTION
31905

In re Applications of)
)
JANICE M. SCANTLAND)
)
ROBERT G. CASAGRANDE)
)
For Construction Permit for a)
New FM Station on Channel 282A)
in Richwood, Ohio)

MM DOCKET NO. 93-127

File No. BPH-920113MC

File No. BPH-920115ME

JUL 2 3 35 PM '93

DISPATCHED BY

MEMORANDUM OPINION AND ORDER

Issued: June 29, 1993

; Released: July 1, 1993

1. Under consideration are a Motion to Compel, filed on June 9, 1993, by Janice M. Scantland ("Scantland"), and a Response to Motion to Compel, filed on June 28, 1993, by Robert G. Casagrande ("Casagrande").

2. Scantland moves for the issuance of an order compelling Casagrande to produce certain documents pursuant to the Standard Document Production Order, Section 1.325(c)(1) of the Commission's Rules. Specifically, Scantland contends that financing documents, representative documents relating to claims for enhancement credits and preferences, and documents concerning the activities of the applicant's principals in preparing the application were not produced pursuant to Sections 1.325(c)(1)(v), (x) and (xii) of the Rules. In addition, Scantland challenges Casagrande's assertion of privilege with respect to the documents which were withheld on that basis.

3. Financing Documents. Scantland claims that no financing documents were produced. Casagrande responds that "the applicant relied upon its personal financial condition of which the applicant had personal knowledge without reference to any documents." (Response, at para. 2.)

4. Scantland's motion for the production of these documents will be granted. Section III, Question 3, of Casagrande's application identifies "Robert G. and Holly K. Casagrande" as the applicant's sole source of funds in the amount of \$173,000. The Instructions for Section III, at Paragraph D(3)(c), require the applicant to have on hand at the time it files its application, for each person who has agreed to furnish funds, a balance sheet or a financial statement showing, among other things: all liabilities and current and liquid assets sufficient to meet current liabilities; financial ability to comply with the terms of the agreement to furnish funds; and net income after Federal income tax received for the past two years. It is apparent from his Response that Casagrande does not have such balance sheets or financial statements. Under these circumstances, in order to comply with the Standard Document Production Order, Casagrande will be required to produce all documents within the applicant's possession or control that support the representation that, at the time the application was filed, Robert G. and Holly K. Casagrande had net liquid assets in the amount of \$173,000 with which to finance the construction and operation of the proposed station. In other words, Casagrande must produce all documents which formed the basis for, or supported, his "personal knowledge" of

the applicant's financial qualifications. Such documents may include, for example, bank statements, savings account statements, certificates of deposit, brokerage account statements, real estate appraisals, and documents evidencing both long and short-term liabilities.

5. Enhancement Credit Documents. Scantland notes that Casagrande has claimed enhancement credit for his past broadcast experience at 11 broadcast stations. However, Scantland argues that no representative documents were produced with respect to several of those stations. Casagrande, in his Response, states that he has provided additional documents to Scantland, and represents that further documents will be produced if they are found.

6. Scantland's motion will be granted to the extent that Casagrande must produce representative documents with respect to his involvement with the stations for which no documentation has yet been produced, if such documents are subsequently discovered.

7. Application Preparation Documents. Scantland contends that no documents falling into this category have been produced. Casagrande responds that such documents will be produced if they are later found.

8. Scantland's motion will be granted to the extent that Casagrande must produce the documents in this category, with the exception of documents for which a claim of privilege is made, if such documents are subsequently discovered.

9. Privilege Claims. Casagrande claims that 14 documents,¹ and approximately 21 pages of former counsel's handwritten notes and drafts of the initial application and an amendment, are protected by the attorney-client privilege ("privilege") and/or the work product doctrine ("doctrine"). Scantland disputes those claims. With his Response, Casagrande submits the documents in question for an in camera inspection.² For the reasons which follow, Casagrande will be required to produce the following documents in whole or part: Documents 1 through 7, 9, 10, and 12.

(a) Document 1. This document must be produced, but paragraph 3 may be deleted because it contains confidential communications from the client, which are protected from disclosure by the privilege, and the opinion of counsel, which is protected by the doctrine. WWOR-TV, Inc., 5 FCC Rcd 6261 (1990). The remainder of the document is nothing more than a "boilerplate" summary by counsel of the Commission's requirements for filing Form 301. It contains no

¹ Document 8, which was originally withheld, has been turned over to Scantland.

² In his Response, Casagrande makes no argument and provides no rationale or support for his contention that the documents are protected by the privilege or the doctrine. Nor does Casagrande specify for each document whether the privilege and/or doctrine is applicable. Rather, Casagrande merely submits the documents for an in camera inspection. While the assertion of a privilege without explanation may result in its summary denial, Pensacola Radio Partners, FCC 93R-20, released May 19, 1993, the Presiding Judge has viewed Casagrande's claims in a light most favorable to that applicant.

confidential facts, and discloses no mental impressions, conclusions, opinions, and/or legal theories. It is not, therefore, protected by either the privilege or the doctrine. Id.

(b) Documents 2 and 10. These documents must be produced but the dollar amounts may be deleted as irrelevant. The remainder of the documents contain no confidential facts, and disclose no mental impressions, conclusions, opinions, and/or legal theories. They are not, therefore, protected by either the privilege or the doctrine. WWOR-TV, supra; Western Cities Broadcasting, Inc., 6 FCC Rcd 3599 (Rev. Bd. 1991).

(c) Document 3. This document must be produced. It is nothing more than a transmittal letter which is not entitled to protection. WWOR-TV, supra.

(d) Document 4. This document must be produced, but the last sentence of paragraph 3 and the last sentence of paragraph 7 may be deleted because they contain the opinions of counsel which are protected by the doctrine. The remainder of the document is nothing more than a "boilerplate" summary by counsel of the Commission's requirements relating to the applicant's public file, local notice, and Section 1.65 obligations. It discloses no confidential facts, mental impressions, conclusions, opinions, and/or legal theories and is not, therefore, protected by either the privilege or the doctrine. WWOR-TV, supra.

(e) Document 5. The two Transmission Reports and the two Facsimile Transmittal Cover Sheets must be produced as they are the equivalent of transmittal letters which are not protected. WWOR-TV, supra. The remainder of the document, which contains confidential engineering material, is protected by the doctrine and need not be produced. Opal Chadwell, 59 RR 2d 1115, 1119 (Rev. Bd. 1986); see also WWOR-TV, supra at para. 19.

(f) Document 6. For the reasons stated above, the two Message Confirmations, the Transmission Report, and the three Facsimile Transmittal Cover Sheets must be produced. In addition, the documents appended to the two Facsimile Transmission Cover Sheets sent on April 30, 1992, to Greg Casagrande, Robert's brother, must be produced. Since these documents were sent to a third party, any rights under the privilege were waived unless it can be shown that Greg and Robert Casagrande had a common legal interest or that transmitting them to Greg was essential to the provision of legal services to Robert. Georgia Public Telecommunications Commission, 5 FCC Rcd 4560 (1990). No such showing has been made by Casagrande, and none is apparent to the Presiding Judge. The remainder of the document, namely, the attachment to the April 29, 1993, Facsimile Transmittal Cover Sheet sent to Robert Casagrande, contains confidential facts which are protected by the privilege, and need not be produced. WWOR-TV, supra.

(g) Document 7. For the reasons stated above, the Message Confirmation and the Facsimile Transmittal Cover Sheet must be produced. The remainder of the document need not be produced as it contains confidential facts which are protected by the privilege, and confidential engineering material which is protected by the doctrine. WWOR-TV, supra; Opal Chadwell, supra.

(h) Document 9. This document must be produced but the third and fourth paragraphs may be deleted. Those paragraphs contain the mental

impressions of counsel and are protected by the doctrine. WWOR-TV, supra. The remainder of the document is not protected because it contains no confidential facts and discloses no mental impressions, conclusions, opinions, and/or legal theories of counsel. Id.

(i) Document 11. This document need not be produced. It contains the mental impressions of counsel and is protected by the doctrine. WWOR-TV, supra.

(j) Document 12. This document must be produced. For the reasons stated above, the Telecopy Transmittal Form is not protected. The remainder of the document consists of a copy of the Hearing Designation Order in this proceeding, DA 93-477, released May 5, 1993, which is a public document that is not privileged.

(k) Documents 13 and 15. These documents need not be produced. They were prepared in anticipation of litigation and contain the mental impressions, conclusions, opinions, and/or legal theories of counsel, which are protected by the doctrine. WWOR-TV, supra.³

(l) Document 14. This document need not be produced. It contains confidential facts provided by the client to the attorney which are protected by the privilege. WWOR-TV, supra.

(m) Handwritten Material. These documents need not be produced. To the extent the handwritten notes are legible, they contain confidential information transmitted by the client, as well as the mental impressions of counsel. They are, therefore, protected by the privilege and the doctrine. WWOR-TV, supra. Also included are confidential engineering materials which are protected by the doctrine. Opal Chadwell, supra.

Accordingly, IT IS ORDERED that the Motion to Compel filed by Scantland on June 9, 1993, IS GRANTED to the extent discussed above, and that the documents requested SHALL BE PRODUCED by delivering copies thereof to the offices of counsel for Scantland within five (5) days of the release of this order, or in such other time and manner as may be mutually agreeable to counsel.

FEDERAL COMMUNICATIONS COMMISSION

Arthur I. Steinberg

Arthur I. Steinberg
Administrative Law Judge

³ It should be noted, however, that portions of Document 15 have already been provided to Scantland. Specifically, Document 15 contains copies of Casagrande's June 1, 1993, Integration (and Divestiture) Statement, and Mr. Bechtel's June 1, 1993, letter to Messrs. Begley and Goldstein regarding document production. The ruling in the text pertains to Mr. Bechtel's letters transmitting these items to Mr. Casagrande.